

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOSEPH B. KATZ,

Appellant,

vs.

COMMISSIONER OF IMMIGRATION AT THE
PORT OF SAN FRANCISCO, CALIFOR-
NIA,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Northern District of California,
First Division.

Filed

JUL 16 1916

F. D. Mouckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States, for the
Northern District of California, First Division.*

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas Corpus.

Names and Addresses of Attorneys of Record.

MARSHALL B. WOODWORTH, Esq., Attorney for
Appellant and Petitioner.

UNITED STATES OF AMERICA.

*District Court of the United States, Northern Dis-
trict of California.*

Clerk's Office.

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas Corpus.

Praecipe for Transcript of Record.

To the Clerk of Said Court:

Sir: Please issue certified copy of following papers, pleadings, etc.: (1) Petition for Writ of Habeas Corpus; (2) Order therein; (3) Demurrer; (4) Order Sustaining Demurrer; (5) Notice of Appeal; (6) Petition for Appeal; (7) Order Allowing Appeal; (8) Assignment of Errors; (9) Cost Bond; (10) Stipulation as to Exhibits; Citation; and all minute orders of Court except those of postponements; Praecipe for Appeal.

Also opinions of Court in 15,753 and 15,752, being respectively in Matters of Joseph B. Katz, No. 15,753, and Matter of Harry H. Katz, No. 15,752.

MARSHALL B. WOODWORTH,
S. LUKE HOWE,

Attorneys for Appellant.

[Endorsed]: Filed Apr. 17, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

*In the District Court of the United States, Northern
District of California, First Division.*

(No. 15,753.)

In the Matter of JOSEPH KATZ, on Habeas Corpus.

Petition for Writ of Habeas Corpus.

To the Honorable, the said District Court of the
United States, Northern District of California,
First Division:

The petition of the above named respectfully sets
forth and states:

(I)

That the petitioner, Joseph Katz, is a resident of Colfax, State and Northern District of California, and has been a regularly domiciled resident of said State and Northern District of California continuously last past for the period of eight years and over; that he first arrived and lawfully entered the United States at the port of New York in the year 1906, with the then intention of permanently remaining

*Page-number appearing at foot of page of original certified Record.

and residing in the United States and of becoming a regularly domiciled resident, denizen and inhabitant of the United States, and a citizen thereof, and that he has since continuously resided in the United States, and that during all of said time, since his arrival in the United States, he has been, and now is, a regularly domiciled resident, denizen and inhabitant of the State and Northern District of California, and of the United States of America, and, up to and at the time of the unlawful detention, restraint and imprisonment hereinafter complained of, was lawfully and regularly domiciled and living in Colfax, State and Northern District of California, and had and has no home, abode or [2] domicile elsewhere.

That said petitioner, on or about November 15, 1906, in the city of New York, State of New York, duly and regularly applied for and was granted his first papers as a citizen of the United States, to wit; his declaration of intention to become a citizen of the United States, and that ever since it has been and now is his purpose and aim to be admitted and to become a citizen of the United States of America.

That your petitioner has, since his arrival in the United States, plied his trade as a barber, first in New York, then in San Francisco, then in Palo Alto, then in Sacramento, then and now in Colfax, that he is a hard working, industrious and frugal man who has saved up his money, and that he has made some small investments in buying and selling real estate.

(II)

That your said petitioner is unlawfully im-

prisoned, restrained, confined and detained of his liberty by the Commissioner of Immigration at the port of San Francisco, and is about to be taken from his domicile and abode in the State of California, and from his domicile and abode in the United States of America, and sent against his will to the Kingdom of Great Britain, of which he is not a resident and has not been for very many years, and in which he has no domicile, abode, home or residence.

That the illegality of said imprisonment, detention, confinement and restraint consists in this:

That the said Commissioner of Immigration claims to have the legal right to, and does, hold the said petitioner in imprisonment and detention, and claims the right and is about to deport and banish him from the State of California and from [3] the United States by virtue of and under the authority of a pretended warrant of deportation directing him so to deport and banish him, which said warrant, it is claimed by said Commissioner of Immigration, was issued by the Secretary of Labor under and by virtue of the laws of the United States made and promulgated to regulate and provide for the deportation of certain alien persons, to wit, under the authority of the Immigration Act of February 20, 1907 (34 Stats. 898), as amended by the Act of March 26, 1910 (36 Stats. 263.)

That the said Secretary of Labor and the said Commissioner of Immigration had, and now have, no jurisdiction or lawful authority so to deport or banish the said petitioner from the United States for the following reasons, to wit:

First. That your petitioner is charged, in the warrant of arrest (Exhibit "A") and is ordered deported, upon the charge that he has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute, or prostitutes.

That it is claimed by said Secretary of Labor and said immigration officials that your petitioner is guilty of said charge for the simple and only reason that he is the landlord of the property in Colfax, California, which, at the time of his arrest on said charge, was occupied and used as a house of prostitution, and that he collected a monthly rent from one Nellie White, who had rented said premises from your petitioner, of \$25 per month; that, for these reasons and none other, it is claimed by said Secretary of Labor and said immigration officials that your petitioner, in receiving, in the capacity of landlord and in no other capacity, the monthly rental of \$25 from Nellie White, a prostitute and manager of said house of prostitution, was guilty of having been "found receiving, [4] sharing in, or deriving benefit from the earnings of a prostitute, or prostitutes," as charged in said warrant of arrest (Exhibit "A.")

In this behalf, your petitioner alleges that at all times during his ownership of said property, so rented from him by said Nellie White and conducted as a house of prostitution, he occupied simply and only the capacity and function of a landlord, and that Nellie White occupied the capacity and function of his tenant; that he received from Nellie White, as his tenant, the monthly rental of \$25 in

payment solely and exclusively for the rent of said premises, consisting of the land and a house containing several rooms; that said monthly rental of \$25 was a reasonable rent for such a house in that particular locality; that at no time or place was it ever understood or agreed by and between your petitioner, as landlord, and said Nellie White, as his tenant, that said monthly rental of \$25 was anything more or less than for the rental of said premises or that said \$25 monthly rental was, or should be, made up, in part or in whole, out of the earnings of any prostitute, or prostitutes.

In this regard, your petitioner alleges that at no time has he ever "been found receiving, sharing in, or deriving benefit from the earnings of a prostitute, or prostitutes," as charged in said warrant of arrest. (See Exhibit "A.")

Your petitioner further alleges, that he never had, at any time, any, the slightest, interest in the management of said house of prostitution so conducted as aforesaid by said Nellie White as his tenant, or in any of the profits or earnings of said Nellie White or of any woman practicing prostitution on said premises, of which he *has* solely and exclusively the [5] landlord, and that he has never received, or shared in, or derived any benefit whatsoever from the earnings of a prostitute, or prostitutes, anywheres and at any time.

Your petitioner further alleges that at the time of his arrest and at all of the times of the alleged existence of the charge made against him in and by

said warrant of arrest he was, and he alone was, the sole and exclusive owner and landlord of said premises so rented from him by said Nellie White, and that neither his brother, Harry Katz, or any other person whatsoever, ever had, or now has, any interest whatsoever in said premises, or the land and improvements situated thereon.

Second. That your petitioner did not have any legal hearing upon the charge made against him in the warrant of arrest issued against him dated February 26, 1914, a copy of which warrant of arrest is appended hereto, marked Exhibit "A" and made a part hereof.

Third. That this petitioner is not amenable to any of the provisions of the Act of February 20, 1907, as amended by the Act of March 26, 1910, in that there was and is no sufficient, legal, or competent, or any, evidence, showing that he "is unlawfully within the United States in that he has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute, or prostitutes," as charged in said warrant of arrest. (See Exhibit "A.")

Fourth. That there was and is no sufficient, or any, warrant of deportation authorizing the Commissioner of Immigration, at Angel Island, California, in whose custody, confinement, restraint and imprisonment this petitioner now is, to deport this petitioner from the port of San Francisco to a foreign country or elsewhere, or to hold this petitioner in detention and imprisonment for any purpose whatsoever. [6]

Fifth. That this petitioner was and is ordered deported without any due process of law, or proof of any kind or character proving, or tending to prove said alleged charge made against him.

(III)

This petitioner further alleges that, before any pretended warrant of deportation was issued against him as aforesaid, the said petitioner was denied by the said Secretary of Labor and by the immigration officers at the port of San Francisco that full and fair hearing guaranteed by the law, and, in this behalf, your petitioner alleges as follows:

First. That your petitioner was subjected to private and secret investigations and examinations without his consent and compelled to be a witness against himself without first having been advised and informed of the charges pending against him and of his rights in the matter and of the fact that any statement made by him might, could and would be used against him, and that the consequences of an unfavorable decision would result in his deportation and banishment, and without being allowed or permitted first to be advised by, or have the benefit of, legal counsel.

Second. That the so-called evidence attempted to be presented and introduced against your petitioner, upon which said pretended warrant of deportation is based, consists of statements based on information and belief, contained in affidavits, without any opportunity whatever of cross-examining the persons making said affidavits, or without any notice whatever to said petitioner, or to his attorneys, or any of

them, that said persons were about to, or would, swear to said affidavits, and consists, further, of *ex parte* and hearsay statements, matters of opinion, conjectures and surmise, private [7] reports and other matter of an incompetent, immaterial and irrelevant character, not permitted to be admitted in the courts of justice of the United States, State or federal, and wholly insufficient to support any of the charges upon which it is sought to deport this petitioner, all of which will more fully appear by reference to a copy of the proceedings before said Commissioner of Immigration and the Secretary of Labor, made a part hereof and marked Exhibits "A" to —.

Third. Your petitioner further alleges that the said immigration officers further acted in bad faith and arbitrarily and illegally in said pretended trial, or hearings, in not producing any witnesses or evidence to support the truth of the charges alleges against this petitioner, and in acting wholly and entirely and solely upon statements based on information and belief, contained in affidavits, without any opportunity whatever of cross-examining the persons making said affidavits, or without any notice whatever to said petitioner, or to his attorneys, or any of them, that said persons were about to, or would, swear to said affidavits, and in acting wholly and entirely and solely upon *ex parte* affidavits without an opportunity for cross-examination, and in denying the right of cross-examination as to all of the persons whose affidavits were presented against this petitioner, and in acting upon hearsay state-

ments and private reports, matters of opinion, conjecture and surmise, and other matter of an incompetent, immaterial and irrelevant character, not permitted to be admitted in the courts of justice of the United States, State or federal, and wholly insufficient to support any of the charges upon which it is sought to deport this petitioner, all of which will more fully appear by reference to a copy of [8] the proceedings herein above referred to, attached to this petition and made a part hereof.

(IV)

That said petitioner was denied the right of an appeal from the decision of the Secretary of Commerce and Labor, and that the only hearing allowed him was the hearing before the Secretary of Commerce and Labor, at which the warrant of deportation was issued, at which hearing this petitioner was not present and did not have any notice thereof, the other hearings, if any, at Angel Island, California, before the Commissioner of Immigration, being merely in the nature of private detective investigations against this petitioner and of secret examinations of this petitioner without his consent and at times without his presence and without being represented by legal counsel at all stages of the proceedings or even being permitted first to obtain legal advice or being warned or advised as to his rights in the matter or at all.

(V)

That said pretended hearing before said Commissioner of Immigration did not, and does not, constitute a full and fair, or full or fair, hearing within

the meaning of the law, in that this petitioner was not permitted, nor were any of his counsel, to see or peruse or obtain a copy of the recommendations of the examining officer and the officer in charge as contemplated by paragraph c. of subd. 4 of Rule 22 of the rules relating to arrest and deportation on warrant, promulgated by the Department of Commerce and Labor, Bureau of Immigration and Naturalization, on November 15, 1911, First Edition; that such practice is not consistent with the eternal principles of right and justice; that this petitioner or its counsel had no opportunity to know what the recommendations of the immigration [9] officials were and, upon what reasons said recommendations, being adverse, were based, had no opportunity to take exceptions thereto or to correct any errors therein, or to combat or refute the same or to protect the rights of this petitioner before the Secretary of Labor when he received said adverse recommendations and considered and acted upon the same and ordered this petitioner deported.

(VI)

That said Secretary of Labor and the immigration officials, in the various particulars above set forth, acted arbitrarily and that their proceedings were and are manifestly unfair, and that the action of such executive officers was and is such as to prevent a fair investigation, and that there was and is a manifest abuse of the discretion committed to such executive officers by statute.

(VII)

This petitioner avers that he has herewith ap-

pendent to this petition and made a part hereof a full, true and correct copy of all of the proceedings before the immigration officials, so far as the same have been disclosed to this petitioner or to his counsel, and of which he is, or his counsel are, aware.

(VIII)

That your petitioner has exhausted all legal or other remedies specified in the Acts of Congress relating to the subject matter.

(IX)

That your petitioner is not an alien or other immigrant; and that he has acquired and now holds a fixed, permanent residence and domicile in the city of Colfax, State and Northern District of California, and has enjoyed and maintained his residence and domicile in the United States for [10] many years continuously last past without molestation or interference until the time of your petitioner's arrest and threatened deportation as aforesaid.

(X)

That your petitioner is now detained, imprisoned, confined and restrained of his liberty and is imprisoned at said Angel Island, California, and is held and imprisoned by the order and direction of the Secretary of Labor, and is in the custody of the Commissioner of Immigration at the port of San Francisco, California, who claims the right to deport this petitioner under and by virtue of the pretended warrant of deportation hereinabove referred to.

That said Commissioner of Immigration threatens to take, carry away and deport this petitioner to

some foreign country forthwith, and will so deport this petitioner unless stayed by the writ of this Court or the order and direction of this Court.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue out of this Honorable Court, and that he be brought before this Court then and there to inquire into the cause of his said imprisonment and threatened deportation; that in the meantime, all proceedings against him be stayed, and that he be not taken without the jurisdiction of this Court during the pendency of these proceedings and that your petitioner be admitted to bail in such sum as to this Court may seem meet and proper; and that said immigration officers be required to make a full and complete return showing the cause of the detention of your petitioner; and, finally, that your petitioner be restored to his liberty and permitted to go [11] hence without day.

J. B. KATZ,
Petitioner.

State of California,
City and County of San Francisco,
Northern District of California,—ss.

Joseph B. Katz, being first duly sworn, deposes and says: That he has read the foregoing petition for a Writ of Habeas Corpus and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are stated on information and belief, and, as to those matters, that he believes them to be true.

J. B. KATZ.

Subscribed and sworn to before me this 16th day of December, 1914.

[Seal]

MARTIN ARONSOHN,
Notary Public in and for the City and County of
San Francisco, State of California. [12]

Epitome and Index of Exhibits.

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dated Sept. 1, 1914. p. 48-50

NOTE: For copies of further proceedings and papers as against Joseph Katz we beg to refer and make part hereof to copies of proceedings and papers attached to petition for writ of habeas corpus on behalf of Harry Katz (this day filed in this court), and marked Exhibits "CCC" to and including Exhibits "VVV." [14]

[Endorsed]: Filed Dec. 16, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

*In the District Court of the United States, Northern
District of California, First Division.*

In the Matter of JOSEPH KATZ, on Habeas Corpus.

Order to Show Cause.

Upon reading the petition on file herein and good cause appearing therefor, it is ordered that the respondent, the Commissioner of Immigration at the port of San Francisco, California, appear in this court on the 24th day of December, 1914, at 10 o'clock A. M., and then and there show cause, if any, why the writ of habeas corpus should not issue as prayed for and that during the pendency of these proceedings the petitioner be not removed from the jurisdiction of this Court, and that a copy of this order and of said petition be served upon respondent forthwith and that the petitioner be admitted to bail in the sum of one thousand dollars.

Dated December 16, 1914.

M. T. DOOLING,
U. S. District Judge.

[Endorsed]: Filed Dec. 16, 1914. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [16]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 16th day of December, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, District Judge.

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas Corpus.

Minutes—Order to Show Cause.

In this matter M. B. Woodworth, Esq., presented to the Court the petition of Joseph B. Katz for a writ of habeas corpus for and on his own behalf. After considering said petition, the Court ordered that the respondent, the Commissioner of Immigration at the port of San Francisco, do appear, and show cause on December 24th, 1914, at 10 o'clock A. M., why a writ of habeas corpus should not issue herein as prayed for in said petition. Further ordered that a copy of this order and copy of said petition be served on said respondent. Further ordered that the detained herein be admitted to bail in the sum of One Thousand Dollars (\$1,000), and upon the giving of such bail he be released from custody accordingly. [17]

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

In the Matter of JOSEPH KATZ on Habeas Corpus.

Demurrer to Petition for Writ of Habeas Corpus.

Now comes the respondent, Samuel W. Backus, Commissioner of Immigration at the port of San Francisco, in the State and Northern District of California, and demurs to the petition for a writ of habeas corpus in the above-entitled matter and for grounds of demurrer alleges:

I.

That said petition does not state facts sufficient to entitle the petitioner to the issuance of a writ of habeas corpus or any relief thereon.

II.

That said petition is insufficient in that the statements in the petition relative to the record of the testimony taken on the trial of the applicant are statements of conclusions of law.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JNO. W. PRESTON,

United States Attorney.

WALTER E. HETTMAN,

Asst. United States Attorney,

Attorneys for Respondent.

Service admitted this 5th day of January, 1915.

MARSHALL B. WOODWORTH,

Atty. for Pet.

[Endorsed]: Filed Jan. 5, 1915. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [18]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 5th day of February, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable M. T. DOOLING, District Judge.

No. 15,753.

In the Matter of JOSEPH KATZ, on Habeas Corpus.

Minutes of Hearing on Order to Show Cause.

This matter came on regularly for hearing on the order to show cause why writ of habeas corpus should not issue as prayed for in the petition filed herein and the demurrer thereto filed by respondent. After hearing W. E. Hettman, Esq., Assistant United States Attorney, on behalf of respondent, and M. B. Woodworth, Esq., on behalf of petitioner and detained, the Court ordered said matter submitted and petitioner to have ten days to file points and authorities. [19]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas
Corpus.

**Order Sustaining Demurrer to Petition and Denying
Petition for a Writ of Habeas Corpus.**

MARSHALL B. WOODWORTH and S. LUKE
HOWE, Attorneys for Petitioner.

JOHN W. PRESTON, United States Attorney,
and CASPAR A. ORNBAUN, Assistant
United States Attorney, Attorneys for Re-
spondent.

**ON DEMURRER TO PETITION FOR WRIT OF
HABEAS CORPUS.**

The record here shows that Joseph B. Katz was the owner of the house in Colfax; that the same was a house of prostitution; that he knew it, and that he received rent for the house from Nellie White, one of the inmates. I think this brings him within the terms of the statute as deriving "benefit from the earnings of a prostitute."

The demurrer to the petition will therefore be sustained, and the application for a writ denied.

November 26th, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Nov. 26, 1915. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [20]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 26th day of November, in the year of our Lord, one thousand nine hundred and fifteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas Corpus.

**Minutes—Order Sustaining Demurrer to Petition,
and Denying Petition for Writ.**

In this matter the Court this day ordered that the demurrer to the petition for a writ of habeas corpus herein, heretofore argued and submitted, be, and the same is hereby, sustained, and the petition for such writ denied accordingly. [21]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 15,752.

In the Matter of HARRY KATZ, on Habeas Corpus.

**Opinion and Order Overruling Demurrer, and
Granting Writ.**

**ON DEMURRER TO PETITION FOR A WRIT
OF HABEAS CORPUS.**

MARSHALL B. WOODWORTH and S. LUKE
HOWE, Attorneys for Petitioner.

JOHN W. PRESTON, United States Attorney
and CASPAR A. ORNBAUN, Assistant
United States Attorney, Attorneys for Re-
spondent.

The records here which accompany the petition show no real evidence against the petitioner. The affidavits are upon information and belief, and express only the opinions of the affiants. It is true that in this State the reputation of a house as a house of ill-fame, may be shown, but I know of no rule, here or elsewhere, which permits the ownership or management of such a house to be thus proved. There should be, in my opinion, some fair, substantial testimony upon which to base an order deporting from this country an alien who has lawfully entered it. The record here is too long to recite, but the closest scrutiny of it will not reveal in all the testimony taken, whether in the presence or absence

of petitioner, and competent evidence, and by that I mean evidence other than pure hearsay and expressions of opinion, tending to support the finding that petitioner was either connected with the [22] management of a house of prostitution or has been found receiving, sharing in, or deriving benefit from the earnings of a prostitute or prostitutes. It may be true that the presence of petitioner in this country is displeasing to many worthy people, but he may not be deported for that reason. He can only be deported after a fair hearing, and then only when the order deporting him finds support in something other than mere hearsay and opinion. The demurrer to the petition will be overruled, and a writ will issue returnable December 11th, 1915, at 10 o'clock A. M.

November 26th, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Nov. 26, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [23]

*In the District Court of the United States, in and for
the Northern District of California, First Di-
vision.*

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas
Corpus.

Notice of Appeal.

To Hon. JOHN W. PRESTON, United States Attor-
ney, and Hon. CASPAR A. ORNBAUN, Assis-
tant United States Attorney, Attorneys for Re-
spondent:

Gentlemen:

You, and each of you, will please take notice that the petitioner in the above-entitled matter, Joseph B. Katz, through his attorneys, Marshall B. Woodworth and S. Luke Howe, feeling himself aggrieved by the judgment of the above-entitled court rendered on November 26, 1915, sustaining the demurrer to the petition for a writ of habeas corpus and denying his application for a writ of habeas corpus, hereby appeals from said judgment and decision to the Circuit Court of Appeals for the Ninth Circuit.

San Francisco, Cal., December 7, 1915.

Respectfully,

MARSHALL B. WOODWORTH,
S. LUKE HOWE,

Attorneys for Petitioner and Appellant.

Received a copy of the within notice of appeal this
7th day of December, 1915.

JNO. W. PRESTON,
Attorneys for Respondent.

[Endorsed]: Filed Dec. 7, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [24]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas
Corpus.

Petition for Appeal.

Joseph B. Katz, the petitioner in the above-entitled matter, feeling himself aggrieved by the judgment of the above-entitled Court made and entered herein on November 26, 1915, whereby it was ordered and adjudged that the demurrer to the petition for a writ of habeas corpus be sustained and the application and petition for the *writ* of habeas corpus, denied, now comes through his attorneys and petitions said court for an order allowing him, the said petitioner, to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided; and that all further proceedings in this court be suspended, stayed and superseded until the final determination of said appeal.

And your petitioner will ever pray etc.

Dated April 17th, 1916.

MARSHALL B. WOODWORTH,
S. LUKE HOWE,
Attorneys for said Petitioner.

Service of the within by copy admitted this 17 day of Apr., 1916.

JNO. W. PRESTON,
Attorney for Respondent.

[Endorsed]: Filed Apr. 17, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [25]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas
Corpus.

Assignment of Errors.

Now comes the petitioner in the above-entitled matter, by Marshall B. Woodworth, Esq., one of his attorneys, and specifies the following errors upon which he will rely and which he will urge upon his appeal in the above-entitled matter, to wit:

I.

That the Court erred in sustaining the demurrer to the petition for a writ of habeas corpus.

II.

That the Court erred in denying the petition for a writ of habeas corpus.

III.

That the Court erred in not granting the petition for a writ of habeas corpus and in not discharging the petitioner.

IV.

The Court erred in holding that the petitioner was

subject to deportation for the reason that he came within the terms of Section 3 of the Act of February 20, 1907 (34 Stat. 898), as amended by the Acts of March 26, 1910 (36 Stat. 263), and March 4, 1913, entitled "An Act to Regulate Immigration of aliens into the United States," providing that any alien should be deported who should "derive benefit from any part of the earnings of any prostitute." [26]

V.

The Court in holding that the petitioner was subject to deportation, for the reason that the record showed that the petitioner was the owner of the house in Colfax; that the same was a house of prostitution; that he knew it, and that he received rent for the house from Nellie White, one of the inmates; and that thereby he came within the terms of Section 3 of the Act of February 20, 1907 (34 Stat. 898), as amended by the Acts of March 26, 1910 (36 Stat. 263), and March 4, 1913, entitled "An Act to Regulate Immigration of Aliens into the United States," as deriving "benefit from the earnings of a prostitute."

VI.

The Court erred in holding that the petitioner is subject to deportation under Section 3 of the Act of February 20, 1907 (34 Stat. 898), as amended by the Acts of March 26, 1910 (36 Stat. 263), and March 4, 1913, entitled "An Act to Regulate Immigration of Aliens into the United States," simply because, being an alien and owning a piece of property in Colfax, California, and receiving a monthly rental of \$25.00, in the capacity of landlord and in no other

capacity or relation, from Nellie White, who managed and used the house as a house of prostitution and was one of the inmates thereof, the Court considered that he was deriving "benefit from any part of the earnings of any prostitute."

VII.

The Court erred in holding that aliens, who own real estate within the United States and rent the same merely as landlords and in no other capacity or relation and receive a reasonable rent therefor, having nothing whatsoever to do with the conduct or management of the premises rented, or any interest therein as a house of prostitution, are deemed to be subject to deportation [27] as coming within the terms of Section 3 of the Act of February 20, 1907 (34 Stat. 898), as amended by the Acts of March 26, 1910 (36 Stat. 263), and March 4, 1913, entitled "An Act to Regulate Immigration of Aliens into the United States," providing that any alien should be deported who should "derive benefit from any part of the earnings of any prostitute."

WHEREFORE, for the many manifest errors committed by said Court, the defendant, through his attorneys, prays that said judgment sustaining the demurrer to the petition for a writ of habeas corpus and denying the petition for a writ of habeas corpus, and remanding the petitioner to the custody of the Commissioner of Immigration at Angel Island, California, to be deported upon the warrant of deportation issued and now outstanding against him, be reversed and for such other and further relief as the Court may think meet and proper.

Dated April 17th, 1916.

MARSHALL B. WOODWORTH,
S. LUKE HOWE,

Attorneys for Defendant.

Service of the within by copy admitted this 17
day of Apr. 1916.

JNO. W. PRESTON,
C.G.H.

Attorney for Respondent.

[Endorsed]: Filed Apr. 17, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [28]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas
Corpus.

Order Allowing Appeal.

Upon motion of Marshall B. Woodworth, Esq., one of the attorneys for the petitioner in the above-entitled matter, and upon filing the petition for an appeal and assignment of errors herein, it is hereby ordered that an appeal be, and it is hereby, allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore rendered herein sustaining the demurrer to the petition for a writ of habeas corpus and denying the application and petition for the writ of habeas corpus, and other matters and things in said petition and assignment of errors set forth; and that mean-

while all further proceedings in this court be suspended, stayed and superseded until the determination of said appeal.

Dated April 17, 1916.

WM. W. MORROW,
United States Circuit Judge, Ninth Judicial Circuit.

Service of the within by copy admitted this 17 day
of Apr. 1916.

JNO. W. PRESTON,
C.G.H.

Attorney for Respondent.

[Endorsed]: Filed Apr. 17, 1916. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [29]

*In the District Court of the United States, Northern
District of California, First Division.*

No. 15,753.

In the Matter of JOSEPH B. KATZ, on Habeas
Corpus.

**Stipulation that Original Exhibits Attached to Peti-
tion of Joseph B. Katz and to Petition of Harry
H. Katz be Transmitted to the Clerk of the Cir-
cuit Court of Appeals and that the Same Need
not be Printed in the Transcript of Record.**

It is hereby stipulated and agreed, by and between
counsel for the respective parties, that the exhibits
attached to the petition of Joseph B. Katz and to
the petition of Harry H. Katz may be transmitted to
the clerk of the Circuit Court of Appeals and that
the same need not be printed in the transcript of

record. The exhibits are Exhibits "A," to "NN," attached to petition of Joseph B. Katz, and Exhibits "CCC" to "VVV," attached to petition of Harry H. Katz.

Dated April 14, 1916.

JNO. W. PRESTON,
United States Attorney.
MARSHALL B. WOODWORTH,
S. LUKE HOWE,
Attorneys for Petitioner.

Order.

Pursuant to said stipulation, it is hereby ordered that said exhibits may be detached from said petitions and transmitted to the clerk of the Circuit Court of Appeals.

Dated May 8, 1916.

M. T. DOOLING,
U. S. Judge.

[Endorsed]: Filed May 8, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [30]

**Certificate of Clerk, U. S. District Court, as to
Transcript on Appeal.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 30 pages, numbered from 1 to 30, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the matter of Joseph B. Katz, on Habeas Corpus, No. 15,753, as the same now remain on file and of record in the office of the clerk of said court;

said transcript having been prepared pursuant to and in accordance with the "Praecipe" (copy of which is embodied in this transcript), and the instructions of the attorney for petitioner and appellant herein.

I further certify that the costs for preparing and certifying the foregoing transcript on appeal is the sum of Sixteen Dollars and Thirty Cents (\$16.30), and that the same has been paid to me by the attorney for appellant herein.

Annexed hereto is the Original Citation on Appeal issued herein, page 32.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 9th day of June, A. D. 1916.

[Seal]

WALTER B. MALING,

Clerk.

T. L. Baldwin,

Deputy Clerk.

CMT.

[Ten Cent Internal Revenue Stamp. Canceled 6/9/16. T. L. B.] [31]

Citation on Appeal.

UNITED STATES OF AMERICA.—ss.

The President of the United States, to Commissioner of Immigration at Port of San Francisco, California, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San

Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, First Division, wherein Joseph B. Katz is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOOLING, United States District Judge for the Northern District of California, First Division, this 16th day of May, A. D. 1916.

M. T. DOOLING,

United States District Judge. [32]

United States of America,—ss.

On this 16th day of May, in the year of our Lord one thousand nine hundred and sixteen, personally appeared before me, Martin Aronsohn, the subscriber, Marshall B. Woodworth and makes oath that he delivered a true copy of the within citation to the United States Attorney for the Northern District of California, Attorney for Commissioner of Immigration at Port of San Francisco, Cal.

MARSHALL B. WOODWORTH.

Subscribed and sworn to before me at San Francisco, Cal., this 16 day of May, A. D. 1916.

[Seal]

MARTIN ARONSOHN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 15,753. United States District Court for the Northern District of California, First Division. Joseph B. Katz, Appellant, vs. Commissioner of Immigration at Port of San Francisco, Cal. Original. Citation on Appeal. Filed May 16, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[Endorsed]: No. 2812. United States Circuit Court of Appeals for the Ninth Circuit. Joseph B. Katz, Appellant, vs. Commissioner of Immigration at the Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filed June 9, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.